

VICTIMS' RIGHTS — Victim of crime has rights even though he may not be a named victim of a charged crime — Revised 4/2010

A victim against whom a crime has been committed has the right to refuse a defense interview even though the victim is not the named victim of a charged crime. A.R.S. § 13-4433.¹ In *State ex rel. Romley v. Superior Court*, 184 Ariz. 409, 909 P.2d 476 (App.1995), the defendant was driving drunk and hit another driver's car, damaging the other driver's car but not injuring him. The defendant was charged only with DUI, not with criminal damage or endangerment. During discovery, the defense attorney asked to interview the driver, and the driver refused pursuant to A.R.S. § 13-4433. The defense moved to depose the driver, arguing that he could not be a "victim" because DUI was a "victimless" crime². *Id.* at 410-411, 909 P.2d at 477-478. The trial court granted the motion to depose the driver, "finding that because he was not a crime victim he could not refuse a defense interview." *Id.* at 410, 909 P.2d at 477.

The State petitioned for special action and the Court of Appeals granted relief. The Court reasoned that A.R.S. § 13-4401 defines a victim as "a person against whom the criminal offense has been committed," and that "criminal

¹ A.R.S. § 13-4433(A) states:
Unless the victim consents, the victim shall not be compelled to submit to an interview on any matter, including any charged criminal offense witnessed by the victim and that occurred on the same occasion as the offense against the victim, or filed in the same indictment or information or consolidated for trial, that is conducted by the defendant, the defendant's attorney or an agent of the defendant.

² Defense held that the defendant did not intend to hit the other driver; and the driver was not personally "harmed" by the collision. *Id.* at 410-411, 909 P.2d at 477-478.

offense" is defined in A.R.S. § 13-4401(6) as "conduct that gives a peace officer or prosecutor probable cause to believe that a felony or that a misdemeanor involving physical injury, *the threat of physical injury* or a sexual offense occurred." *Id.* at 410, 909 P.2d at 477. The Court reasoned that because the driver could have been injured in the collision, the DUI involved "the threat of physical injury." The Court therefore concluded:

[The driver] falls within the plain language defining "victim" as "a person against whom the criminal offense [was] committed." Although [defendant] only damaged [the driver's] car rather than [the driver] personally, the crime of DUI was nonetheless committed against him. Similarly, the definition of "criminal offense" as conduct giving rise to a felony or misdemeanor involving "the threat of physical injury" requires us to conclude that [defendant's] actions constituted a criminal offense threatening [the driver] with physical injury. Common sense demands the same conclusion.

Id. at 411, 909 P.2d at 478.